

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 Donte Johnson,
4

5 Petitioner

6 v.

7 William Gittere, *et al.*,

8 Respondents

Case No. 2:18-cv-00740-JAD-NJK

**Order Granting Motion to Vacate Stay
and Reopen Capital Habeas Proceedings**

[ECF No. 41]

9 This capital habeas case was stayed to allow counseled petitioner Donte Johnson to
10 exhaust his claims in state court.¹ Johnson now moves to lift that stay and reopen this case,
11 stating that the state-court proceedings have concluded.² The respondents have indicated that
12 they do not oppose the motion.³ So I grant Johnson's motion, order the stay lifted, order the case
13 reopened, and set a schedule for further proceedings.

14 **IT IS THEREFORE ORDERED** that Petitioner's Motion to Vacate Stay and Reopen
15 Capital Habeas Proceedings [ECF No. 41] is **GRANTED**. The stay of this action is lifted, and
16 the Clerk of the Court is directed to administratively reopen this case.

17 **IT IS FURTHER ORDERED** that the following schedule will govern the further
18 proceedings in this action:

19 1. Second Amended Petition. Petitioner has until August 12, 2024, to file a second
20 amended petition for writ of habeas corpus or a notice stating that he will not be filing a second
21 amended petition. The second amended petition must specifically state whether each ground for
22 relief has been exhausted in state court; for each claim that has been exhausted in state court, the
23 second amended petition must state how, when, and where that occurred.

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26 ¹ ECF No. 28.

27 ² ECF No. 41.

28 ³ ECF No. 43.

1 2. Response to Petition. Respondents will have 90 days following the filing of the
2 second amended petition, or following the notice that no second amended petition will be filed,
3 to file an answer or other response to the second amended petition or to the first amended
4 petition if no second amended petition will be filed.


5 3. Reply and Response to Reply. Petitioner will have 60 days following the filing of
6 an answer to file a reply. Respondents will thereafter have 30 days following the filing of a reply
7 to file a response to the reply.

8 4. Briefing of Motion to Dismiss. If respondents file a motion to dismiss, the
9 petitioner will have 60 days following the filing of the motion to file a response to the motion.
10 Respondents will thereafter have 30 days following the filing of the response to file a reply.

11 5. Discovery. If the petitioner wishes to move for leave to conduct discovery, he
12 must file such motion concurrently with, but separate from, the response to respondents' motion
13 to dismiss or the reply to respondents' answer. Any motion for leave to conduct discovery filed
14 by petitioner before that time may be considered premature and may be denied without prejudice
15 on that basis. Respondents must file a response to any such motion concurrently with, but
16 separate from, their reply in support of their motion to dismiss or their response to the
17 petitioner's reply. Thereafter, the petitioner will have 20 days to file a reply in support of the
18 motion for leave to conduct discovery.

19 6. Evidentiary Hearing. If petitioner wishes to request an evidentiary hearing, he
20 must file a motion for an evidentiary hearing concurrently with, but separate from, the response
21 to respondents' motion to dismiss or the reply to respondents' answer. Any motion for an
22 evidentiary hearing filed by petitioner before that time may be considered premature and may be
23 denied without prejudice on that basis. The motion for an evidentiary hearing must explain why
24 an evidentiary hearing is warranted and must meet the requirements of 28 U.S.C. § 2254(e). The
25 motion must state whether an evidentiary hearing was held in state court, and, if so, where the
26 transcript is located in the record. If petitioner files a motion for an evidentiary hearing,
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1 respondents must file a response to that motion concurrently with, but separate from, their reply
2 in support of their motion to dismiss or their response to petitioner's reply. Thereafter, petitioner
3 will have 20 days to file a reply in support of the motion for an evidentiary hearing.

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U.S. District Judge Jennifer A. Dorsey
June 12, 2024